

Mark Wray

From: John Fiero <jfiero@pszjlaw.com>
Sent: Friday, August 27, 2021 9:01 AM
To: Jerrold Bregman
Cc: Susan K. Seflin; John David Fischer (fischerlawcal@aol.com); Mark Wray
Subject: RE: Revisions to latest draft of Apartments-Busbin-Golden settlement agreement
Attachments: DOA Claim Objection.pdf; Claim Obj Exhibits.pdf

Here they are, exactly as they were submitted to Judge Sala on July 16.

The Busbin team has not taken issue with the recital because it is true – we were asked by Busbin to refrain from filing the objection prior to the mediation. In case John and Mark did not see these documents before, I am copying them here so that we can move past the question of whether the recital is true.

-John

John Fiero

Pachulski Stang Ziehl & Jones LLP
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From: Jerrold Bregman [mailto:jbregman@bg.law]
Sent: Thursday, August 26, 2021 6:10 PM
To: John Fiero <jfiero@pszjlaw.com>
Cc: Susan K. Seflin <sseflin@bg.law>
Subject: Re: Revisions to latest draft of Apartments-Busbin-Golden settlement agreement

John, those argumentative posturing statements, which are immaterial to the substance of the settlement, are not representations we are comfortable adopting. If you want to make them as yours, that's fine, but we will not do so.



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On Aug 26, 2021, at 6:40 PM, John Fiero <jfiero@pszjlaw.com> wrote:

CAUTION: This email originated from an external source.

Jerry, with regard to your revision that essentially says "the Disbursing Agent contends . . ." such a revision would be incorrect.

This is not something Ms. Gupta merely contends. The language as originally provided was true. Indeed, the objection was finalized and included in the materials sent to the mediator prior to the mediation. I'll be offering additional comments soon, likely tomorrow.

-John

John Fiero

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<image002.png>

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From: Jerrold Bregman [<mailto:jbregman@bg.law>]

Sent: Tuesday, August 24, 2021 11:33 AM

To: 'Kevin Coleman' <kcoleman@nutihart.com>; 'John David Fischer' <fischerlawcal@aol.com>; John Fiero <jfiero@pszjlaw.com>; Gail S. Greenwood <ggreenwood@pszjlaw.com>; Mark Wray (<mwray@markwraylaw.com>)

Cc: Steven T. Gubner <sgubner@bg.law>; Susan K. Seflin <sseflin@bg.law>

Subject: RE: Revisions to latest draft of Apartments-Busbin-Golden settlement agreement

Hi Kevin – we are okay with that revision. All the best, - Jerry



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From: Kevin Coleman <kcoleman@nutihart.com>

Sent: Tuesday, August 24, 2021 11:13 AM

To: Jerrold Bregman <jbregman@bg.law>; 'John David Fischer' <fischerlawcal@aol.com>; 'John Fiero' <jfiero@pszilaw.com>; Gail S. Greenwood <ggreenwood@pszilaw.com>; Mark Wray (<mwray@markwraylaw.com> <mwray@markwraylaw.com>)

Cc: Steven T. Gubner <sgubner@bg.law>; Susan K. Seflin <sseflin@bg.law>

Subject: RE: Revisions to latest draft of Apartments-Busbin-Golden settlement agreement

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Jerry,

Paragraph 3.d should be revised to read:

“While also a term in the settlement agreement for the adversary action against asserted insiders in the Desert Land bankruptcy, this Agreement also memorializes that the Nuti Hart fee application in the Desert Land bankruptcy case will be allowed in full (subject to any agreed upon reductions with the US Trustee or any other party), provided that Nuti Hart shall not receive, and Nuti Hart agrees to not receive, more than \$50,000 from the Desert Land estate (**which sum would be in addition to the \$80,000 previously paid to and received by Nuti-Hart**) in full satisfaction of its allowed chapter 11 administrative claim in the Desert Land bankruptcy case.”

John Fiero may have other comments/revisions.

--Kevin

From: Jerrold Bregman [<mailto:jbregman@bg.law>]

Sent: Tuesday, August 24, 2021 10:37 AM

To: 'John David Fischer' <fischerlawcal@aol.com>; 'John Fiero' <jfiero@pszilaw.com>; Gail S. Greenwood <ggreenwood@pszilaw.com>; Kevin Coleman <kcoleman@nutihart.com>; Mark Wray (<mwray@markwraylaw.com> <mwray@markwraylaw.com>)

Cc: Steven T. Gubner <sgubner@bg.law>; Susan K. Seflin <sseflin@bg.law>

Subject: Revisions to latest draft of Apartments-Busbin-Golden settlement agreement

All,

In the interest of moving this forward with as much alacrity as may be mustered under the circumstances, please know that we have accepted substantially all of the revisions from the Nuti-Hart firm and from the Pachulski firm – Attached is our draft which first accepted all revisions from the Pachulski firm's latest draft (circulated August 20), which itself had accepted all of the revisions from the Nuti-Hart firm (from August 9), and then we made our very few revisions in "track changes" format. (We've also attached a PDF so our revisions may be viewable on cell phones).

Please know that in addition to some "nits," we added back the "further assurances" clause, which we view as material and necessary, and also, with respect to attorneys' fees for breach of the agreement, the "substantially" qualifier to "prevailing party," as well as the "in addition to other damages" clause, all of which are customary and potentially important for settlement agreements. To avoid further back and forth on those points, on which we are not prepared to agree otherwise, we are prepared to submit those matters to Judge Sala to resolve if anyone continues to oppose their inclusion (please just let us know, and we can together coordinate submitting the matter to Judge Sala).

Please let us know if you have any questions about the foregoing, the attached, or anything else.

All the best,

- Jerry



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From: John David Fischer <fischerlawcal@aol.com>

Sent: Monday, August 23, 2021 1:53 PM

To: Jerrold Bregman <jbregman@bg.law>; Susan K. Seflin <sseflin@bg.law>

Cc: kcoleman@nutihart.com; mwwray@markwraylaw.com

Subject: Fwd: Revised DOA.DL.Busbin Agreement

CAUTION: This email originated from an external source.

Jerry,

To avoid confusion, since using the word John versus the first and last names might make it unclear, I am forwarding the version that Kevin Coleman prepared in response to the changes I made from Susan's and Kevin's comments to my first draft.

I am assuming the John you referring to in your last email are John Fiero's changes to that version.

While Busbin Trustee is okay with the changes made by Kevin Coleman, so that that version is OK with Busbin and Gavita, we are reviewing John Fiero's suggested changes. And also awaiting any comments that you might. Do not assume that we are OK with all of John Fiero's suggested changes.

John David Fischer
Fischer, Zisblatt & Kiss, LLP
310/376-2402

-----Original Message-----

From: Kevin Coleman <kcoleman@nutihart.com>

To: John David Fischer <fischerlawcal@aol.com>; sseflin@bg.law <sseflin@bg.law>

Cc: mwray@markwraylaw.com <mwray@markwraylaw.com>; brad@busbinlaw.com <brad@busbinlaw.com>; John Fiero <jfiero@pszilaw.com>; Kavita Gupta <kgupta@guptaferrer.com>; Gail S. Greenwood <ggreenwood@pszilaw.com>

Sent: Thu, Aug 19, 2021 12:56 pm

Subject: RE: Revised DOA.DL.Busbin Agreement

Hi John,

Sorry for the delay. My mark-up to your Aug. 16 draft is attached, along with a copy of the transcript of the settlement conference. The changes are explained in the comments embedded in the document.

My understanding is that John Fiero will be forwarding additional comments/revisions as well.

Best regards,

--Kevin

From: John David Fischer [<mailto:fischerlawcal@aol.com>]

Sent: Tuesday, August 17, 2021 10:03 AM

To: sseflin@bg.law; Kevin Coleman <kcoleman@nutihart.com>

Cc: mwray@markwraylaw.com; brad@busbinlaw.com

Subject: Revised DOA.DL.Busbin Agreement

Susan and Kevin,

Attached are clean and redlined versions of the revised draft DOA settlement agreement. They are the number 1 sequence documents.

I incorporated most of both of your comments and changes.

To make your review easier, I've included redlines of each of your differences from your last proposed version against the attached clean revised agreement. Document number two contains the differences between the Busbin revised draft and the DOA last version. Document number three contains the differences between the Busbin revised draft and the Desert Land last version.

As I did include most of your changes, this should be close to a Final draft.

Susan, a major change was that I deleted the requirement of a wire transfer of the funds. It is my understanding that the US Trustee does not permit wire transfers of disbursements from a bankruptcy estate, only checks.

Please advise of any comments.

Kevin, John Fiero wants to review the draft. I'm assuming you want a draft sent to him, but let me know.

John David Fischer
Fischer, Zisblatt & Kiss, LLP
310/376-2402